

June 1, 2017

**CASES**

4                    No. 64  
Town of Amherst,  
    Appellant,  
    v.  
Granite State Insurance Company, Inc.,  
    Respondent.

In the Matter of the Hon. J. Marshall Ayres, a  
Justice of the Conklin Town Court, Broome  
County.

1                    No. 88 SSM 13  
In the Matter of Raymond Castro,  
    Respondent,  
    v.  
Dora Schriro, &c., et al.  
    Appellants.

Order, insofar as appealed from, affirmed, with costs,  
in a memorandum.  
Chief Judge DiFiore and Judges Rivera, Garcia and  
Wilson concur.  
Judge Stein dissents in an opinion.  
Judge Fahey took no part.

On the Court's own motion, it is determined that  
Honorable J. Marshall Ayres is suspended, with pay,  
effective immediately, from the office of Justice of  
Conklin Town Court, Broome County, pending  
disposition of his request for review of a  
determination by the State Commission on Judicial  
Conduct.  
Chief Judge DiFiore and Judges Rivera, Stein, Fahey,  
Garcia and Wilson concur.

On review of submissions pursuant to section 500.11  
of the Rules, order affirmed, with costs, and certified  
question answered in the affirmative. Under the  
circumstances presented, the Appellate Division  
correctly held that the petition stated a claim for  
improper termination.  
Chief Judge DiFiore and Judges Rivera, Stein, Fahey,  
Garcia and Wilson concur.

1                    No. 87 SSM 8  
Clarence Gaines, as the Executor of the Estate  
of Janie Gaines, Deceased,  
                  Respondent,  
          v.  
City of New York, et al.,  
                  Defendants,  
Department of Social Services of the City of  
New York,  
                  Appellant.

On review of submissions pursuant to section 500.11  
of the Rules, order affirmed, with costs, and certified  
question answered in the affirmative. Under the  
circumstances of this case, a valid supplemental  
needs trust was never effected. Claimants did not  
argue before Supreme Court that the trust was not a  
lifetime trust governed by EPTL 7-1.17 and EPTL 7-  
1.18. That argument is, therefore, unpreserved for  
our review.  
Chief Judge DiFiore and Judges Rivera, Stein, Fahey,  
Garcia and Wilson concur.

                          No. 89  
Kathleen Makinen et al.,  
                  Respondents,  
          v.  
City of New York, et al.,  
                  Appellants.

Certification of a question by the United States Court  
of Appeals for the Second Circuit, pursuant to section  
500.27 of this Court's Rules of Practice, accepted and  
the issues presented are to be considered after  
briefing and argument.  
Chief Judge DiFiore and Judges Rivera, Stein, Fahey,  
Garcia and Wilson concur.

4                    No. 3  
The People &c.,  
                  Respondent,  
          v.  
Shawn J. Sivertson,  
                  Appellant.

Order affirmed, in a memorandum.  
Chief Judge DiFiore and Judges Fahey, Garcia and  
Wilson concur.  
Judge Rivera dissents in an opinion in which Judge  
Stein concurs.

## MOTIONS

2                    Mo. No. 2017-325  
347 Central Park Associates, LLC,  
Appellant,  
v.  
Pine Top Associates, LLC, et al.,  
Respondents.

Motion for leave to appeal denied with one hundred dollars costs and necessary reproduction disbursements.

2                    Mo. No. 2017-292  
In the Matter of 7-Eleven, Inc. et al.,  
Appellants,  
v.  
Town of Huntington, et al.,  
Respondents.

Motion for leave to appeal denied.

1                    Mo. No. 2017-539  
The People &c.,  
Respondent,  
v.  
Gonzalo Aguilar,  
Appellant.

Motion for an extension of the time within which to apply for permission to appeal pursuant to CPL 460.20 granted and motion papers treated as a timely CPL 460.20 application.

2                    Mo. No. 2017-562  
The People &c.,  
Respondent,  
v.  
Nagmeldeen Azaz,  
Appellant.

Motion for an extension of the time within which to apply for permission to appeal pursuant to CPL 460.20 granted and motion papers treated as a timely CPL 460.20 application.

3                    Mo. No. 2017-346  
Arthur Blake,  
Appellant,  
v.  
State of New York,  
Respondent.

Motion for leave to appeal denied.  
Motion for poor person relief dismissed as academic.

1                    Mo. No. 2017-319  
The People &c.,  
    Respondent,  
    v.  
Albert Carlo,  
    Appellant.

Motion for leave to appeal denied.  
Motion for poor person relief dismissed as academic.

                    SSD 27  
Richard Chamberlain et al.,  
    Appellants,  
    v.  
New York State Department of Taxation and  
Finance, et al.,  
    Respondents.

Appeal transferred without costs, by the Court sua  
sponte, to the Appellate Division, Third Department,  
upon the ground that the constitutional question  
presented on this direct appeal is not substantial (see  
Gerzof v Gulotta, 40 NY2d 825 [1976]).

4                    Mo. No. 2017-236  
Jeffrey Cianchetti, DC,  
    Respondent,  
    v.  
Phyllis Burgio, DC,  
    Appellant.

Motion for leave to appeal denied.

1                    Mo. No. 2017-336  
Zaida De La Rosa,  
    Appellant,  
    v.  
Richard Okwan et al.,  
    Respondents.

Motion for leave to appeal denied with one hundred  
dollars costs and necessary reproduction  
disbursements.

3                    Mo. No. 2017-256  
In the Matter of Roberto DeJesus,  
    Appellant,  
    v.  
Donald Venettozzi, &c.,  
    Respondent.

Motion for leave to appeal denied.

1                    Mo. No. 2017-328  
In the Matter of Gilberto Diaz,  
                  Appellant,  
          v.  
Arlene Goldberg, &c., et al.,  
                  Respondents.  
(Appellate Division No. 2779)

On the Court's own motion, appeal dismissed, without costs, upon the ground that no appeal lies as of right from the unanimous order of the Appellate Division absent the direct involvement of a substantial constitutional question (see CPLR 5601). Motion for poor person relief dismissed as academic.

1                    Mo. No. 2017-438  
In the Matter of Gilberto Diaz,  
                  Appellant,  
          v.  
Cyrus R. Vance, &c., et al.,  
                  Respondents.  
(Appellate Division No. 2990)

On the Court's own motion, appeal dismissed, without costs, upon the ground that no appeal lies as of right from the unanimous order of the Appellate Division absent the direct involvement of a substantial constitutional question (see CPLR 5601). Motion for poor person relief dismissed as academic.

3                    Mo. No. 2017-323  
In the Matter of Amil Dinsio,  
                  Appellant,  
          v.  
Raymond J. Elliott, III, &c.,  
                  Respondent.

Motion for leave to appeal dismissed upon the ground that the December 20, 2016 and January 27, 2017 letters sought to be appealed from are neither judgments nor orders from which an appeal to this Court may be taken (see CPLR 5512[a]; CPLR 5602[a]). Motion for poor person relief dismissed as academic.

3                    Mo. No. 2017-313  
In the Matter of Christopher Ellison,  
                  Appellant,  
et al.,  
                  Petitioners,  
                  v.  
Tina M. Stanford, &c., et al.,  
                  Respondents.

Motion for leave to appeal denied.  
Motion for poor person relief dismissed as academic.

4                    SSD 28  
Charles R. Fotheringham,  
                  Appellant,  
                  v.  
Riversource Life Insurance Co. of New York,  
&c., et al.,  
                  Respondents.

Appeal dismissed without costs, by the Court sua  
sponte, upon the ground that no substantial  
constitutional question is directly involved.

2                    Mo. No. 2017-308  
Kathleen Gammon et al.,  
                  Appellants,  
                  v.  
Edward Curley et al.,  
                  Respondents.

Motion for leave to appeal denied with one hundred  
dollars costs and necessary reproduction  
disbursements.

                          Mo. No. 2017-565  
Karine Gevorkyan, et al.,  
                  Appellants,  
                  v.  
Ira Judelson,  
                  Respondent.

Motion by The Legal Aid Society to join the amici  
curiae brief filed by Brooklyn Defender Services, et  
al. granted.

3                    Mo. No. 2017-570  
The People &c.,  
                  Respondent,  
                  v.  
Kenneth Godfrey,  
                  Appellant.

Motion for an extension of the time within which to  
apply for permission to appeal pursuant to CPL  
460.20 granted and motion papers treated as a timely  
CPL 460.20 application.

1                    Mo. No. 2017-283  
In the Matter of Stephen Grant,  
    Appellant,  
    v.  
New York City Loft Board et al.,  
    Respondents.

Motion for leave to appeal denied.

4                    SSD 25  
In the Matter of Michael A. Gurnett,  
    Appellant,  
    v.  
James F. Bargnesi &c.,  
    Respondent.

Appeal dismissed without costs, by the Court sua  
sponte, upon the ground that no substantial  
constitutional question is directly involved.

3                    Mo. No. 2017-588  
The People &c.,  
    Appellant,  
    v.  
Brian Hakes,  
    Respondent.

Motion for assignment of counsel granted and  
Kathryn Friedman, Esq., c/o The Sage Law Firm  
Group, P.O. Box 200, 465 Grant Street, Buffalo, NY  
14213 assigned as counsel to the respondent on the  
appeal herein.

4                    Mo. No. 2017-351  
The People &c. ex rel. John Hemphill,  
    Appellant,  
    v.  
Barry McCardle, &c. et al.,  
    Respondents.

Motion for leave to appeal denied.

2                    Mo. No. 2017-512  
The People &c.,  
    Appellant,  
    v.  
Bryan Henry,  
    Respondent.

Motion for assignment of counsel granted and Judah  
Maltz, Esq., 125-10 Queens Boulevard, Suite 12,  
Kew Gardens, NY 11415 assigned as counsel to the  
respondent on the appeal herein.

2 Mo. No. 2017-331  
Tiffany Hernandez, &c. et al.,  
Appellants,  
v.  
City of New York, et al.,  
Respondents.

Motion for leave to appeal denied with one hundred dollars costs and necessary reproduction disbursements.

2 Mo. No. 2017-298  
Melanie Horn,  
Respondent,  
v.  
Michael Horn,  
Appellant.

Motion for leave to appeal denied.

4 Mo. No. 2017-340  
In the Matter of the Estate of Mansfield B.  
Jordan, Deceased.

Motion for leave to appeal denied.

Norma J. Mobley et al., &c.,  
Appellants;  
Veronica T. Reyes,  
Respondent.

2 Mo. No. 2017-335  
In the Matter of Stephanie M.

Motion for leave to appeal denied.  
Motion for poor person relief dismissed as academic.  
Chief Judge DiFiore took no part.

Westchester County Department of Social  
Services,  
Respondent;  
Jose M.,  
Appellant.  
(And Another Proceeding.)



1                    Mo. No. 2017-349  
In the Matter of New York City Asbestos  
Litigation.

Charles D. North, &c.,  
Respondent,

v.

Air & Liquid Systems Corporation, &c., et  
al.,

Defendants,  
National Grid Generation, LLC,  
Appellant,  
O'Connor Constructors, Inc.,  
Respondent.

Motion for reargument of motion for leave to appeal  
denied.

3                    Mo. No. 2017-347  
In the Matter of Daniel Pagan,  
Appellant,

v.

Anthony J. Annucci, &c.,  
Respondent.

Motion for leave to appeal denied.  
Motion for poor person relief dismissed as academic.

4                    Mo. No. 2017-423  
In the Matter of James P., Jr., &c.

Onondaga County Department of Children  
and Family Services,  
Respondent;  
Tiffany H.,  
Appellant.

Motion for leave to appeal denied.  
Motion for poor person relief dismissed as academic.

1                    Mo. No. 2017-339  
Patrolmen's Benevolent Association of the  
City of New York, Inc., et al.,  
Appellants,

v.

City of New York, et al.,  
Respondents.

Motions for leave to appeal denied with one hundred  
dollars costs and necessary reproduction  
disbursements.

1                    Mo. No. 2017-571  
The People &c.,  
    Respondent,  
    v.  
Rafael Perez,  
    Appellant.

Motion for assignment of counsel granted and Seymour W. James, Jr., Esq., The Legal Aid Society, 199 Water Street, New York, NY 10038 assigned as counsel to the appellant on the appeal herein.

3                    Mo. No. 2017-37  
In the Matter of Luis Rosales,  
    Respondent,  
    v.  
Eugene J. Felice Landscaping et al.,  
    Appellants.  
Workers' Compensation Board,  
    Respondent.

Motion for leave to appeal denied.

3                    Mo. No. 2017-33  
In the Matter of Michael Sarbo,  
    Respondent,  
    v.  
Tri-Valley Plumbing & Heating et al.,  
    Appellants.  
Workers' Compensation Board,  
    Respondent.

Motion for leave to appeal denied.

1                    Mo. No. 2017-476  
The People &c.,  
    Appellant,  
    v.  
Durville Small,  
    Respondent.

Motion for assignment of counsel granted and Robert S. Dean, Esq., Center for Appellate Litigation, 120 Wall Street, 28th Floor, New York, NY 10005 assigned as counsel to the respondent on the appeal herein.

4 Mo. No. 2017-591  
The People &c.,  
Respondent,  
v.  
Leroy Savage Smith,  
Appellant.

Motion by New York Civil Liberties Union for leave to appear amicus curiae on the appeal herein granted only to the extent that the proposed brief is accepted as filed. Three copies of the brief must be served and an original and nine copies filed within seven days.

4 Mo. No. 2017-344  
The People &c.,  
Respondent,  
v.  
Matthew Symonds,  
Appellant.

Motion for leave to appeal denied.

3 Mo. No. 2017-1  
In the Matter of Janine Till,  
Appellant,  
v.  
Apex Rehabilitation et al.,  
Respondents.  
Workers' Compensation Board,  
Respondent.

Motion for leave to appeal denied.

1 Mo. No. 2017-491  
The People &c.,  
Respondent,  
v.  
Teri W.,  
Appellant.

Motion for assignment of counsel granted and Seymour W. James, Jr., Esq., The Legal Aid Society, 199 Water Street, New York, NY 10038 assigned as counsel to the appellant on the appeal herein.

4 Mo. No. 2017-302  
In the Matter of Samuel Walton,  
Appellant,  
v.  
John Colvin, &c. et al.,  
Respondents.

Motion for leave to appeal denied.

1                    Mo. No. 2017-307  
Fred Simcha Wang,  
    Appellant,  
    v.  
LSUC, et al.,  
    Respondents,  
et al.,  
    Defendants.

Motion for reargument of motion for leave to appeal  
&c. denied.

2                    SSD 21  
Wells Fargo Bank, N.A., &c.,  
    Respondent,  
    v.  
Doron Eitani, et al.,  
    Defendants,  
David Cohan,  
    Appellant.

Appeal dismissed without costs, by the Court sua  
sponte, upon the ground that the order appealed from  
does not finally determine the action within the  
meaning of the Constitution.

3                    Mo. No. 2017-311  
In the Matter of Beverly Weston,  
    Appellant.  
Commissioner of Labor,  
    Respondent.

Motion for reargument of motion for leave to appeal  
dismissed as untimely (see Rules of Ct of Appeals  
[22 NYCRR] § 500.24[b]).

1                    Mo. No. 2017-365  
In the Matter of Terrell Williams,  
    Respondent,  
    v.  
City of New York, et al.,  
    Appellants.

Motion for leave to appeal granted.

4                    SSD 22  
The People &c. ex rel. Diane Word,  
    Appellant,  
    v.  
State of New York, et al.,  
    Respondents.

Appeal dismissed without costs, by the Court sua  
sponte, upon the ground that the order appealed from  
does not finally determine the proceeding within the  
meaning of the Constitution.